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3509 Connecticut Avenue, NW #175 - Washington, DC 20008  
<http://www.x-pac.org> - [XPAC2000@email.com](mailto:XPAC2000@email.com)

Bradley Litchfield  
Associate General Counsel/Policy  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20463

AOR 1999-37

Revised Request for Advisory Opinion: Internet Based Advertisements/Independent Expenditures

November 11, 1999

Mr. Litchfield:

This letter is in response to your e-mail of October 29<sup>th</sup> requesting more information regarding X-PAC's Advisory Opinion Request of October 18<sup>th</sup>. Your questions are answered below and several of our original questions have been revised to avoid asking about activities of third parties. Your questions are indicated in bold below.

**>>Please describe the manner or process you will use to select those candidates who will be featured in your ads.**

X-PAC plans to create on-line advertisements that support candidates for the U.S. Senate and House of Representatives that espouse our views on various issues. We will also create advertisements opposing those candidates that do not reflect our views. Currently, Social Security is our main issue, but we may choose other issues at a later date.

Frankly, we are curious as to why this question was asked.

**>>Describe briefly and discuss (with examples) the sources or lists that X-PAC will use to determine those email addresses to which it will send its election advocacy messages:**

On the X-PAC website (<http://www.x-pac.org>) we currently have a section where site visitors can subscribe to our e-mailing lists. These people have indicated they would like to receive additional material from X-PAC when it is available. We will send our advertisements as email attachments to these addresses.

There are also various bulletin boards that discuss politics on the Internet. Examples include Usenet newsgroups such as *alt.politics*. Using these groups, X-PAC would not actually send the file of the advertisement to the newsgroup, but post a text message describing the advertisement with a link back to the advertisement hosted on the X-PAC website.

**>>Describe any other means, besides e-mail, through which X-PAC will solicit persons to visit its website or will otherwise distribute its election messages.**

As resources permit, X-PAC will be promoting its website through traditional paid print media and on the Internet with banner advertisements that will link back to X-PAC's webpage. X-PAC will also be promoting

the website and the on-line election messages with earned media and by soliciting links on other websites.

**>>Your questions designate a, b and c present legal questions and factual activity that pertain to >>third persons. As such they would not be appropriate for an advisory opinion to X-PAC.**

We recognize we are not allowed to ask questions of third party activities. Therefore we withdraw our questions designated a, b, c. The following questions below (numbered 3, 4, and 5) are substituted instead.

3. Does each email X-PAC sends with one of the previously described advertisements attached need to be reported as a separate independent expenditure?
4. As X-PAC will be encouraging others via our "send this ad to a friend" link on the X-PAC website to forward these ads, what type of information does X-PAC need to collect from those who want to forward the ads and about the intended recipients?
5. Will X-PAC need to take any steps to stop non-U.S. citizens from forwarding these ads?

Please let me know if you have any more questions in regards to this advisory opinion request. I would be more than willing to demonstrate what X-PAC intends to do if it would help the Commission in any way. I can be reached at (202) 253-6534 or via email at [mpanetta@yahoo.com](mailto:mpanetta@yahoo.com).

I thank you for your attention to this matter and look forward to hearing from you soon.

Sincerely,



Michael J. Panetta  
Executive Director

X-PAC: The Political Action Committee for Generation X

<http://www.x-pac.org>

FEC ID Number C00323626

ENCLOSURES

 Bradley Litchfield

10/29/99 06:58 PM 

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To: mpanetta@yahoo.com

cc:

Subject: Letter to FEC dated 10/18/99 for X-PAC

I have received the subject letter and it has been reviewed as a possible advisory opinion request under 11 CFR Part 112. See pertinent quotes below, with red highlights.

Your initial questions numbered 1 & 2 are fairly clear but some further background should be provided as to X-PAC's activity in distributing the election advocacy ads it has created. [Your question number 3 does not appear to be intended as a question, but is instead an explanation for your questions designated a--c.]

Please describe the manner or process you will use to select those candidates who will be featured in your ads. We presume that X-PAC will be selective on some partisan basis and only cover those candidates that it supports and also wants others to support.

Describe and briefly discuss (with examples) the sources or lists that X-PAC will use to determine those email addresses to which it will send its election advocacy messages. Describe any other means, besides e-mail, through which X-PAC will solicit persons to visit its website or will otherwise distribute its election messages.

Your questions designate a, b and c present legal questions and factual activity that pertain to third persons. As such they would not be appropriate for an advisory opinion to X-PAC. See cites below. This office recognizes the importance of these questions to your plans and would suggest that you obtain the participation of at least one individual who is not a member or associate of X-PAC, but who can truthfully represent that he/she wants to engage in the various activities using X-PAC's materials. Such an individual would need to be identified and could join (that is, sign on) with you in submitting a joint advisory opinion request.

You may reply to this email with your own email, but a signed paper document will also be necessary for official record purposes. [We are not yet totally electronic here at the FEC.]

Regards,

**Bradley Litchfield**  
**Associate General Counsel/Policy**

e-mail: brlitch@fec.gov

tel: 202-694-1650

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**TITLE 11--FEDERAL ELECTIONS**

**CHAPTER I--FEDERAL ELECTION COMMISSION**

**PART 112--ADVISORY OPINIONS (2 U.S.C. 437f)--Table of Contents**

**Sec. 112.1 Requests for advisory opinions (2 U.S.C. 437f(a)(1)).**

(a) Any person may request in writing an advisory opinion concerning the application of the Act, chapters 95 or 96 of the Internal Revenue Code of 1954, or any regulation prescribed by the Commission. An authorized agent of the requesting person may submit the advisory opinion request, but the agent shall disclose the identity of his or her principal.

(b) The written advisory opinion request shall set forth a specific transaction or activity that the requesting person plans to undertake or is presently undertaking and intends to undertake in the future. Requests presenting a general question of interpretation, or posing a hypothetical situation, or regarding the activities of third parties, do not qualify as advisory opinion requests.

(c) Advisory opinion requests shall include a complete description of all facts relevant to the specific transaction or activity with respect to which the request is made.

(d) The Office of General Counsel shall review all requests for advisory opinions submitted under 11 CFR 112.1. If the Office of General Counsel determines that a request for an advisory opinion is incomplete or otherwise not qualified under 11 CFR 112.1, it shall, within 10 calendar days of receipt of such request, notify the requesting person and specify the deficiencies in the request.

(e) Advisory opinion requests should be sent to the Federal Election Commission, Office of General Counsel, 999 E Street, NW., Washington, DC 20463.

(f) Upon receipt by the Commission, each request which qualifies as

an advisory opinion request (AOR) under 11 CFR 112.1 shall be assigned an AOR number for reference purposes.

E-mail

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OCT 19 2 51 PM '99

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Federal Election Commission  
999 E Street, NW  
Washington, DC 20463

**Request for Advisory Opinion: Internet Based Advertisements/Independent Expenditures**

October 18, 1999

Dear Sir or Madam:

I am contacting the Federal Election Commission as the Executive Director and Treasurer of X-PAC: The Political Action Committee for Generation X (X-PAC). Our FEC identification number is C00323626. I am writing to request an Advisory Opinion on the issue of internet-based political advertising as independent expenditures.

X-PAC has created several political communications in various electronic formats <sup>(1)</sup>. These communications are advertisements that advocate the election and/or defeat of specific candidates for federal office. As they were made without consultation with any campaign or other committee, these advertisements will be considered "independent expenditures" under the Act.

It is important to note that these advertisement are native to the Internet, meaning they were created specifically for electronic distribution and were never intended to be shown as paid media on either television or radio.

X-PAC plans to distribute these ads through the Internet in two ways: downloading from the X-PAC website ([www.x-pac.org](http://www.x-pac.org)) and through electronic mail<sup>(2)</sup>. A large part of this undertaking will be to encourage the viewers of these advertisements to forward them to others through their own email accounts <sup>(3)</sup> and with a "send this ad to a friend" link on the X-PAC website.

Our questions are:

1. According to Federal Election law these communications have a value as they expressly advocate the election or defeat of candidates for Federal office. They were made in-house by X-PAC using commercially available software <sup>(4)</sup> and will be hosted on our web site at no additional cost beyond what we have previously reported <sup>(5)</sup>. Because the costs involved with the making and hosting of these ads are very minimal, we are seeking clarification as to what the Commission needs to see in terms of financial documentation.
2. Unlike television and radio advertising, there is no cost per unit on each viewing of these advertisements. Because of this ease of duplication, we are seeking clarification: Is it sufficient to report the cost of this ad once as an independent expenditure made by X-PAC, and not have to multiply that cost by the number of times the advertisement was downloaded from the web site.
3. The definition of "expenditure" in 2 U.S.C. 431(9) includes "any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of

influencing any election for" Federal office. In Advisory Opinion 1998-22, the Commission ruled that Internet web pages that expressly advocate the election or defeat of a candidate for Federal office count as either independent expenditures or in-kind contributions, and creators of those web pages need to file the proper reports with the FEC.

With those facts in mind, the following questions arise:

- a. Are the users of the X-PAC web site who choose to download and forward these ads via email to other interested individuals are in fact making their own independent expenditures under the Act?
- b. Will these persons, upon forwarding these advertisements, need to file FEC Form 5?
- c. Will the users need to include a non-authorization notice as mentioned in 11 CFR 109.3 and 11 CFR 110.11 when forwarding these communications, or will X-PAC's disclaimers be sufficient?

I realize you may have several questions in regards to this request. I would be more than willing to demonstrate what X-PAC intends to do if it would help the Commission in any way. I can be reached at (202) 253-6534 or via email at [mpanetta@yahoo.com](mailto:mpanetta@yahoo.com).

I thank you for your attention to this matter and look forward to hearing from you soon.

Sincerely,



Michael J. Panetta  
Executive Director  
X-PAC: The Political Action Committee for Generation X  
<http://www.x-pac.org>  
FEC ID Number C00323626

1. These communications will be in executable programs for Microsoft Windows™ operating systems (.exe) and Real Media files (.ra, .rm, .ram), a proprietary digital media format by Real Networks™.
2. While these files can be accessed via the X-PAC website, they also can be viewed independently of the Internet.
3. Users will be creating a copy of the communication on to their own computers, and using their own email accounts to forward it to others.
4. The two main software packages we are using are "Flash 4" by Macromedia™ and "Real Converter" by Real Networks™.
5. We have previously reported our expenditures for our domain name (x-pac.org) and our website hosting.